

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

|                        |   |                         |
|------------------------|---|-------------------------|
| ROBERT DAVID DUNN,     | ) |                         |
|                        | ) |                         |
| Plaintiff,             | ) |                         |
| vs.                    | ) | Case No. CIV-12-0587-HE |
|                        | ) |                         |
| HARPER COUNTY, ET AL., | ) |                         |
|                        | ) |                         |
| Defendants.            | ) |                         |

**ORDER**

Plaintiff Robert Dunn, a state prisoner appearing *pro se*, brought this civil rights action against defendants under 42 U.S.C. § 1983. Presently at issue is plaintiff's motion to proceed in forma pauperis ("ifp"). Consistent with 28 U.S.C. § 636(b)(3)(B), this matter was referred for initial proceedings to Magistrate Judge Gary M. Purcell. Judge Purcell has recommended the motion be denied because plaintiff is capable of prepaying the full filing fee. Additionally, the magistrate judge recommended that the complaint be dismissed if plaintiff failed to pay the full filing fee by June 11, 2012. Plaintiff has filed an objection and the matter is at issue. The court concludes plaintiff's motion should be denied and his complaint dismissed without prejudice.


Plaintiff's submissions in support of his motion to proceed ifp indicate that he has \$792.96 in his institutional accounts. *See* Motion at 3 [Doc. #2]. The filing fee is \$350 and it must ordinarily be prepaid. *See* 28 U.S.C. § 1914(a); L.Cv.R. 3.2. Plaintiff argues in his objection that he is unable to prepay the full filing fee because he only has \$7.16 in his "draw" account and the funds in his mandatory savings account are inaccessible. But a prisoner may use the funds from his mandatory savings account to pay court filing fees. *See*

57 Okla. Stat. § 549(A)(5). Thus, plaintiff was able to prepay the full filing fee and has failed to do so.

Judge Purcell's report and recommendation [Doc. #5] is **ADOPTED** and plaintiff's motion to proceed ifp [Doc. #2] is **DENIED**. Accordingly, the complaint is **DISMISSED** without prejudice.<sup>1</sup> Consistent with Rule 58(a), a separate judgment will be entered contemporaneously with this order.

**IT IS SO ORDERED.**

Dated this 19th day of June, 2012.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>*The court is dismissing the complaint instead of allowing plaintiff additional time in which to prepay the filing fee because the court is skeptical plaintiff can state a claim upon which relief can be granted. Nevertheless, if plaintiff believes he has a meritorious claim and wishes to proceed with this action, he may file a timely motion to vacate the court's judgment under Fed. R. Civ. P. 59(e) and prepay the full \$350 filing fee.*